

HOUSE BILL 1869
By Davidson

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, in order to abolish the Tennessee higher education commission and create a new Tennessee higher education commission.

WHEREAS, the Tennessee higher education commission was created in 1967 for the purpose of providing coordination and unity in higher education; and

WHEREAS, in recent years there has been a loss of confidence in the objectivity and adequacy of actions of the commission as evidenced by the prior administration's unwillingness to follow the budgetary recommendations of the commission; and

WHEREAS, in recent months the commission has acted in a manner which has fostered perceptions by the governor, the general assembly and the public that the commission has been unduly controlled by political interests rather than public interests; and

WHEREAS, in order for the commission to fulfill its vital role in the delivery of adequate, efficient and effective higher education to the citizens of this State, it is essential that the commission have the fullest possible confidence of the governor, the general assembly, institutions of higher education and the public; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Sections 49-7-201 through 49-7-206, and Tennessee Code Annotated, Section 49-7-210, are deleted.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 7, is amended by adding Sections 3 through 10 as an appropriately numbered new part:

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SECTION 3. In order to achieve coordination, efficiency, effectiveness and unity in the program of public higher education, there is hereby created the Tennessee higher education commission, hereinafter called the commission.

SECTION 4. (a) It is the duty of the commission on a continuing basis to study and report on the use of public funds for higher education in Tennessee and to analyze programs and needs in the field of higher education.

(b) The commission shall, in addition, undertake such specific duties as may be directed by resolution of the general assembly or as may be requested by the governor.

(c) In the discharge of its duties pursuant to subsections (a) and (b), it is also the duty of the commission to:

(1) Develop a master plan for the future development of public higher education in Tennessee, taking into account the programs and functions of each of the existing institutions, and to make recommendations to the governing boards of the various institutions and to the governor and the general assembly for the implementation of the plan. The master plan shall be published in accordance with the rules, regulations, policies and procedures of the state publications committee. The provisions of this subdivision (1) shall apply to state technology centers;

(2) Develop policies and formulae or guidelines for the fair and equitable distribution and use of public funds among the state's institutions of higher learning, including funds for both operating expenses and capital outlay, taking into account enrollment projections, and recognizing institutional differences as well as similarities in function, services, academic programs and levels of instruction;

(A) Such formulae or guidelines shall include provisions for capital outlay programs and operating expenses, and shall be recognized by all

state-supported institutions of higher learning in preparing requests for appropriations.

(B) Such requests for appropriations shall be reviewed by the commission after submission to the commission by the governing boards of the various institutions.

(C) The commission shall determine whether the requests for appropriations conform to the formulae or guidelines developed by the commission and shall modify such requests as necessary to ensure conformance therewith.

(D) After making such determination, the commission shall transmit such requests for appropriations simultaneously to the governor and the general assembly with comments pertaining thereto. Such comments shall describe any modifications to institutional requests and the reason therefor.

(E) In the implementation of this function, the commission, in cooperation with the commissioner of finance and administration and the comptroller of the treasury, shall establish uniform statistical reporting systems in accordance with accepted national standards, which systems shall be adhered to by the various institutions in preparing for submission to the commission statistical data and requests for appropriations.

(F) The provisions of this subdivision (2) shall apply to state technology centers, for the purposes of allowing the commission to study all expenditures made by state technology centers, and to make any studies or recommendations as provided for in this subdivision based on such expenditures. Any recommendations made on operating appropriations for state technology centers shall be made for the system

of state technology centers as a whole and not for individual state technology centers.

(G) The commission shall have no authority for recommending or not recommending individual technology center operating budgets nor in approving or disapproving the transfer of any funds between state technology centers deemed necessary by the state board of regents to carry out the provisions of the Public Acts of 1983, ch. 181;

(3) Analyze expenditures of state-supported institutions of higher education including individual technology centers to determine how actual expenditures of the various institutions compare to the basis upon which funds were allocated to the various institutions under the commission's formulae and guidelines. The results of such analyses shall be considered by the commission when evaluating the adequacy and effectiveness of its formulae and guidelines. The results of such analyses shall be simultaneously reported annually to the governor and general assembly.

(4) Study the need for particular programs, departments, academic divisions, branch operations, extension services, adult education activities, public service activities and work programs of the various institutions of higher learning, with a particular view to their cost and relevance, and to make recommendations to the respective governing boards of the various institutions for the purpose of minimizing undesirable duplication and overlapping of functions and services and to foster cooperative programs among the various institutions;

(A) The commission is authorized to make recommendations to the governing boards for the termination of existing on-campus and off-campus programs of those institutions set forth in § 49-7-203 which are determined by the commission to be undesirably duplicative. A copy of

the recommendations shall be filed with the education committees of the house of representatives and senate.

(B) The governing boards of the institutions shall make a report annually on any such program terminations to the education committees of the house of representatives and senate, and a copy of such report shall be filed with the Tennessee higher education commission.

(C) The commission shall review tuition, maintenance fees and other charges, including special purpose fees and charges such as technology access fees, debt service fees and student activity fees, assessed by each institution and make recommendations to the governing boards of the various institutions regarding adjustments thereto.

(D) The provisions of this subdivision (4) shall apply to technology centers;

(5) Review and approve or disapprove all proposals for new degrees, degree programs and certificate programs, or for the establishment of new academic departments or divisions within the various institutions of higher learning.

(A) Determination of specific courses or course content, however, shall continue to be the exclusive function of the governing boards of the various institutions.

(B) The provisions of this subdivision (5) shall apply to state technology centers only if such schools grant degrees or certificates, and shall apply only to those schools granting degrees or certificates, unless the system as a whole grants degrees;

(6) Conduct a program of public information concerning higher education in Tennessee. The provisions of this subdivision shall apply to state technology centers;

(7) Study and make determinations concerning the establishment of new institutions or branch campuses of institutions of higher learning, as to the desirability or undesirability of their establishment, their location, standards, functions, financing and source of governance. The provisions of this subdivision shall apply to state technology centers;

(8) Submit an biennial report to the governor and the general assembly, commenting upon major developments, trends, new policies, budgets and financial considerations which in the judgment of the commission will be useful to the governor and to the general assembly in planning for the sound and adequate development of the state's program of public higher education. The provisions of this subsection shall apply to state technology centers; and

(9) Establish and implement guidelines for all state-supported higher education institutions regarding the transferability and acceptance of credit hours among such institutions. Such guidelines shall be followed by all such institutions.

SECTION 5. (a) The commission's studies and recommendations shall encompass the programs and authorities of the University of Tennessee, Tennessee Technological University, Austin Peay State University, Tennessee State University, the University of Memphis, East Tennessee State University, Middle Tennessee State University, the community junior colleges, the state's technical institutes and the technology centers.

(b) (1) The commission shall consider Tennessee's private institutions of higher education in its continuous studies of the immediate and future needs of the state in the area of higher education.

(2) These studies shall consider the place of the private institutions in relation to the public institutions.

(3) If these studies show that accredited private institutions in Tennessee can provide either the facility or program needs of the state in a cost-effective manner, the commission is authorized to contract with accredited private institutions in Tennessee for the provision of those educational programs and facilities which will serve to meet the needs of the people of the state.

SECTION 6.

(a)(1)

(A) The commission shall consist of a total of seven (7) voting members. Two (2) voting members each shall be appointed by the speaker of the senate and the speaker of the house. The governor shall appoint three (3) voting members, one of whom shall be the commissioner of the department of education. Additionally, the governor shall appoint two (2) non-voting student members as provided below.

(B) For the initial appointments made pursuant to (A) above, with the exception of the commissioner of education, such appointments shall be selected from lists of potential appointees submitted by the joint oversight committee on education. No later than June 1, 1997, the committee shall submit to the governor and each speaker a list of twelve names of individuals who are willing and qualified, in the committee's judgment, to perform the duties of commission member. In recommending potential commission members, the committee shall strive to include women and racial minorities in proportion to the population of the state. The appointing authorities shall consult with each other as necessary in making their appointments and shall strive to make

appointments that reflect the diversity of the state's population. If any appointing authority is unable to make all appointments from the list submitted, then the committee shall be so notified and shall submit additional recommendations as necessary until all appointments are made.

(C) Ninety (90) days prior to the expiration of the terms of commission members, the joint oversight committee on education shall submit to the appointing authorities a list of six (6) names of individuals who are willing and qualified, in the committee's judgment, to perform the duties of commission member. In recommending potential commission members, the committee shall strive to include women and racial minorities in proportion to the population of the state. The appointing authorities shall consult with each other as necessary in making their appointments and shall strive to make appointments so that the membership of the commission reflects the diversity of the state's population. If any appointing authority is unable to make all appointments from the list submitted, then the committee shall be so notified and shall submit additional recommendations as necessary until all appointments are made.

(D) The executive director of the state board of education shall serve as an ex officio, nonvoting member of the commission.

(2) Except as provided below, membership shall be for a four (4) year term. For purposes of establishing staggered terms, in making initial appointments, each of the appointing authorities shall designate one two (2) year appointment and one four (4) year appointment. The initial terms of all appointed members shall begin July 1, 1997.

(b) (1) Any vacancy on the commission shall be filled by appointment of the appointing authority who originally appointed such member.

(2) Vacancies except for expiration of term shall be filled for the unexpired term only.

(c) (1) One (1) student member of the commission shall be appointed by the governor from a list of three (3) nominees selected and submitted no later than April 15, by the presidents of the student government associations and associated student bodies of all technical schools, colleges and universities in the state university and community college system.

(2) The student member shall serve for a term of two (2) years beginning on July 1, 1997, after the student member's appointment by the governor. The student shall continue as a student in good standing within the state university and community college system during the student's term on the board.

(3) The list of nominees referenced in subdivision (1) shall be selected in accordance with the following provisions:

(A) (i) One (1) nominee shall be enrolled as a full-time student at a four (4) year institution at the time of nomination and shall maintain enrollment as a full-time student at an institution which is a member of the state university and community college system;

(ii) One (1) nominee shall be enrolled as a full-time student at a two (2) year institution at the time of nomination and shall maintain enrollment as a full-time student at an institution which is a member of the state university and community college system;

(iii) One (1) nominee shall be enrolled as a full-time student at the time of nomination at any institution which is a member of the state university and community college system;

(B) The nominees may not be enrolled at the same institution;

(C) All nominees for student commission member shall be residents of this state; and

(D) A majority of the student government association/associated student body presidents of all technical institutions, community colleges and universities in the state university and community college system constitutes a quorum for nomination purposes. A majority vote of those present and voting is necessary to effect a nomination.

(4) The chancellor of the board of regents shall notify all student government association and associated student body presidents in the state university and community college system of the necessity for the nominating procedure herein described.

(d) (1) One (1) student member of the commission shall be appointed by the governor from a list of three (3) nominees prepared and submitted by the governing body of the student government association from one (1) of the following branches of the University of Tennessee:

(A) The University of Tennessee at Knoxville;

(B) The University of Tennessee at Martin;

(C) The University of Tennessee at Chattanooga; and

(D) The University of Tennessee Medical Units at Memphis.

The term is for two (2) years beginning July 1.

(2) (A) Effective July 1, 1997, a student at the University of Tennessee at Chattanooga shall be chosen and shall serve until July 1, 1999; effective July 1, 1999, a student at the University of Tennessee Medical Units at Memphis shall be chosen and shall serve until July 1, 2001; effective July 1, 2001, a student at the University of Tennessee at

Knoxville shall be chosen and shall serve until July 1, 2003; effective July 1, 2003, a student at the University of Tennessee at Martin shall be chosen and shall serve until July 1, 2005.

(B) Such student membership shall be filled on a biennial rotating basis and maintain the sequence established above. The names of the three (3) nominees chosen as set out in this subsection shall be certified to the governor by the chancellor of the appropriate branch of the University of Tennessee.

(e) (1) Except as provided in subsection (a), no commission member shall be an elected or appointed official or employee of the state of Tennessee, nor a trustee, officer or employee of a public institution of higher learning in Tennessee while a member of the commission.

(2) No commission member shall be eligible to qualify as a candidate for any elected office unless such commission member resigns from the commission prior to qualifying as a candidate. For the purposes of this section, "qualify as a candidate" means filing a statement certifying the name and address of a political treasurer pursuant to the provisions of § 2-10-105(e).

(3) No person, who owns jointly or severally any bonds, stocks, or other property in any business or entity regulated by the Tennessee higher education commission, or who is an agent or employee in any way of any such business or entity, or who has any interest personally in any way or manner in any such business or entity, shall be eligible to serve as a commission member of the Tennessee higher education commission.

(4) No commission member shall raise funds or solicit contributions for any political candidate or political party, or actively campaign for any candidate for public office.

(5) No commission member shall enter into an employment relationship, a consulting or representation agreement, or other similar contract or agreement with either an entity regulated by the authority or a subcontractor of such an entity for a period of one (1) year after the commission member ceases to serve as a commission member of the authority.

(6) A student member is exempt from provision (1) above. The commissioner of education and the executive director of the state board of education are exempt from the provisions of this section (e).

(f) (1) The commission's first meeting after all members have been appointed shall be upon the call of the governor.

(2) The commission thereafter shall meet at least four (4) times each year.

(g) The commission shall elect from its number a chair and such other officers as it may deem appropriate, shall determine their terms as officers of the commission, and shall adopt rules for its organization and the conduct of its business.

(h) Commission members shall receive no compensation for their services, but shall be reimbursed for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 7.

(a) (1) The commission is empowered to employ an executive director and define the executive director's duties. Upon initial employment and at all times thereafter, the executive director's compensation shall be equal to that of the commissioner of education, provided, that such compensation shall not be diminished in the event of a reduction in the commissioner of education's salary.

(2) The executive director shall serve for a four (4) year term, the first such term to commence on July 1, 1997 and shall be eligible for reappointment. The executive director shall be removed only by the affirmative vote of five (5) members. In the event of a vacancy, the commission may appoint an executive director for the remainder of the term.

(3) The executive director must have such educational preparation and experience as will qualify the executive director, in the commission's judgment, to understand and evaluate the efficiency and effectiveness of the operations of the state's institutions of higher learning and to direct the studies of the commission.

(b) Within budgetary limitations the commission is empowered to employ such other professional and staff employees as may be appropriate for the efficient discharge of its duties.

(c) The executive director and all other employees shall be reimbursed for travel expenses in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

SECTION 8.

(a) (1) The University of Tennessee shall retain its identity and status as a legal entity, a body politic and corporate, and as one (1) of the state's federal land-grant institutions.

(2) Except as herein expressly provided, its board of trustees shall retain and exercise all the authority, rights, powers and duties, express or implied, vested in it by legislative charter and enactments and other applicable laws. Nothing in this part shall be construed to deprive the board of the authority, rights, powers and duties conferred upon it by law in the government of the

institutions, branches, colleges, divisions and departments now under its control, except those duties which by this part are expressly vested in the commission.

(b) Except for such powers as are vested in the commission by this part, nothing herein shall be construed to deprive the board of regents of the authority, rights, powers and duties conferred upon it by law, express or implied, in the government, control and operation of Austin Peay State University, East Tennessee State University, the University of Memphis, Middle Tennessee State University, Tennessee State University, Tennessee Technological University, or in the operation and control of the community junior colleges, technical institutes and technology centers.

SECTION 9. (a) The Tennessee higher education commission shall submit an annual report to the governor and to the general assembly. The annual report, which shall be incorporated into the annual Tennessee Challenge 2000 report as prescribed in § 49-5-5024, must be published prior to February 15 of each year, beginning in 1998. Before publication, the commission shall distribute a draft of the report to all public postsecondary institutions and shall allow comment upon the draft report. The commission shall develop and adopt a format for the report and shall ensure consistent reporting and collecting of the data in the report by the institutions.

(b) Each public, four year, postsecondary institution shall submit to the commission the following information for inclusion in the report, with the department of correction's students identified and reported separately:

(1) The number and percentage of accredited programs, the number and percentage of programs eligible for accreditation, the number of programs determined to be ineligible for accreditation and the basis upon which such determination was made;

(2) The percentage of students accepted from those applying for admission in the fall term, the percentage meeting admission standards, and the average ACT score of newly admitted students;

(3) The number and percentage of undergraduate students who completed their degree program;

(4) Number of degrees, by discipline, awarded during the previous academic year;

(5) The percentage of lower division instructional courses taught by full-time faculty, part-time faculty, and graduate assistants;

(6) The number and percentage of students enrolled in remedial courses and the number of students exiting remedial courses and successfully completing entry-level college courses;

(7) The percent change in the enrollment rate of African American students and the change in the total number of African American students enrolled over the past five (5) years;

(8) The number of full-time students who have transferred from public, two (2) year, postsecondary institutions; and

(9) Student scores on professional examinations with detailed information on state and national means, passing scores, and pass rates, as available, and with information on such scores over time, and the number of students taking each examination.

(10) Percentages of faculty time dedicated to activities related to sponsored and non-sponsored research, activities related to academic instruction, and administrative activities.

(11) The average direct cost per credit hour of instruction at each institution by department.

(c) Each public, two (2) year, postsecondary institution shall submit to the commission the following information for inclusion in the report:

(1) The number and percentage of accredited programs, the number and percentage of programs eligible for accreditation, the number of programs determined to be ineligible for accreditation and the basis upon which such determination was made;

(2) Average ACT score of newly admitted students;

(3) The number and percentage of students who completed their degree program;

(4) Number of degrees, by discipline, awarded during the previous academic year;

(5) The percentage of courses taught by full-time faculty and part-time faculty;

(6) Job placement rates of graduates of vocational programs in fields of their education and training;

(7) The percent change in the enrollment rate of African American students and the change in the total number of African American students enrolled over the past five (5) years; and

(8) The number of full-time students who have transferred into public, four-year, postsecondary institutions.

(9) The average direct cost per credit hour of instruction at each institution by department.

(d) Each public state technology center shall submit to the commission the following information for inclusion in the report:

(1) The number and percentage of students who completed their training program;

(2) Number of certificates, diplomas, and other awards, by discipline, granted during the previous academic year;

(3) Job placement rates of graduates in fields of their education and training; and

(4) The percentage change in the enrollment rate of African American students and the change in the total number of African American students enrolled over the past five (5) years.

(5) The average direct cost per credit hour of instruction at each center by area of instruction.

(e) Information from the alumni survey conducted as part of the performance funding program must be included every two (2) years in the annual report as required in this section.

(f) The commission shall make no funding recommendation, capital outlay recommendation or distribution or certification on behalf of any public postsecondary institution that has not submitted the information required pursuant to this section.

(g) After discussions with the institutions, the commission, in consultation with the senate and house education committees, shall develop the format for the higher education report as required herein.

(h) The report required by this section must be filed in writing and shall be made available in magnetic media.

SECTION 10. (a) All real and personal property assigned to or under the control of the Tennessee higher education commission as of June 30, 1997, is hereby transferred effective July 1, 1997, to the new Tennessee higher education commission created by this act.

(b) All contracts or leases, except employment contracts, entered into prior to the effective date of this act by the Tennessee higher education commission with any entity,

corporation, enterprise or person, shall continue in full force and effect as to all essential provisions in accordance with the terms and conditions of the contracts in existence on the effective date, to the same extent unless such contracts or leases are amended or modified by the parties thereto or until the expiration of such contract or lease. All employment contracts shall terminate on June 30, 1997.

(c) In order to facilitate an orderly transition, all employees of the Tennessee higher education commission as of June 30, 1997, shall become employees of the new Tennessee higher education commission effective July 1, 1997, and shall continue as such for a period of ninety (90) days at which time their employment shall cease unless otherwise determined by the commission created hereby.

(d) All rules, policies, orders and decisions promulgated or issued by the Tennessee higher education commission prior to, and in effect on June 30, 1997, shall remain in force and effect until duly amended, repealed, or modified or superseded by the new Tennessee higher education commission or until such shall expire.

SECTION 11. The committee on postsecondary educational institutions created pursuant to Tennessee Code Annotated, Section 49-7-207, as it existed on June 30, 1997, shall continue to function as such committee without regard to the abolishment and creation of the Tennessee higher education commission as provided by this act.

SECTION 12. For the purposes of recommending and selecting potential commission members, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall become effective on July 1, 1997, the public welfare requiring it..